

October 15, 1997

The Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED
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FCC MAIL ROOM

Re: CC Docket No. 96-61 Policy and Rules Concerning
Interstate Interexchange Marketplace
Response to Rate Integration Submission by the
Territory of American Samoa pursuant to
CCB July 30, 1997 Memorandum Opinion and Order

Dear Mr. Secretary:

The Common Carrier Bureau has granted all interested parties permission to file comments upon the submission of the American Samoa Government Office of Communication (ASOC) for Rate Integration pursuant to its August 7, 1996 Order and its enforcement Order of July 30, 1997. Since the early 1960's, ASOC has been a monopoly operator of all telecommunications that are available to the American Samoan consumers.

The undersigned is a volunteer spokesman for a group of residents of American Samoa, who are concerned that the only voice heard before the FCC on this critical issue of rate integration for this U. S. Territory of American Samoa, would be that of the self interest of the monopoly telephone operator in American Samoa, the local government's Office of Communication.

This group has called itself "The American Samoa Fund for the Public Interest" because our initial effort was to collect money from each other to pay for three advertisements in the local newspapers to bring the matter of rate integration before the public for the first time in August, 1997, two months ago. No other funds have been collected. These three public statements have been separately submitted as comments in this proceeding.

This effort to respond now to the submission October 1, 1997 by the American Samoa Government's Office of Communication is being done voluntarily, and out of concern for our insular community that plainly has no one representing them in any manner in this critical issue. This is of concern to everyone in our insular Territory, as well as to the more than

200,000 people in other parts of the Nation who have continuing relationships with the Territory.

Prior to our paid advertisements informing the public of the year old FCC Order (August 7, 1996) requiring American Samoa to submit a rate integration plan by August 1, 1997, the residents of the Territory had no awareness of this FCC action. Unlike Guam and Saipan where the FCC ORDER was almost immediately announced publicly by their local governments, the American Samoa Government withheld all mention of the FCC action to the public. Our paid advertisements were the public's first and only source of information, until the local government's press conference on September 24, 1997, 13 months after the fact.

The Government of American Samoa Office of Communication was the only U.S. Territory that refused to comply with the FCC Order of August 6, 1996 requiring a final rate integration plan to be submitted by August 1, 1997. They did not even attempt to comply. So on July 30, 1997, the FCC issued another order to the American Samoa Government requiring compliance on October 1, 1997 for submission of its rate integration plan.

After all this effort by the FCC, the American Samoa Office of Communication finally complied on October 1, 1997. The final demanding Order of the FCC to American Samoa on July 30, 1997, was over 5000 words.

The American Samoa Office of Communications (ASOC) response was a submission of a rate integration plan consisting of a single sentence of less than 60 words, of which only 16 words were relevant:

"Rate Averaging and Integration. By establishing a single set of long distance rates applicable for service to all U.S. points, ASOC is fully complying with the requirements of Section 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §254(g), concerning rate averaging and rate integration of interexchange services, and with the Commission's policies adopted to implement this statutory requirement." at page 6.

This is it. After fifteen months of delaying a response to the FCC on rate integration, and this is all ASOC had to say.

What ASOC is now saying is that they are entitled to charge and collect from the American Samoa consumers absolutely any rate they wish, as long as they make the same charge to all U.S. points. They can raise the rate to a \$1.60 per minute, or \$2.60, or \$3.60.

ASOC's stated view here is that the FCC cannot touch them, as long as their rates to all U.S. Points are equal, and is their choice, and their's alone to charge any rate they desire when the American Samoan consumers wishes to call someone in the rest of the United States.

ASOC has used the occasion of their FCC submission to lower the present rates from 80 cents per minute to 60 cents per minute. Why they did this, is anyone's guess. For under their theory, ASOC really has no legal compulsion to lower any rate at any time.

ASOC is promising "tentatively" to lower the rate to U.S. points to 50 cents per minute on January 1, 1998. But if the FCC agrees with their interpretation of their legal rights, no such change need come about. ASOC can handily ignore this tentative intention under their theory of rate integration when the time comes, and they can do it with impunity.

What ASOC think they have found for themselves in the 1996 Telecommunication Act requiring rate integration is a gold mine. They have discovered, they think, an anomaly in the law's implementing language, a black hole that defies all other gravity and empowers them to do forever whatever they desire with respect to communication rates for the American Samoan consumer to the rest of the United States.

What they figured out is this: The FCC decided as follows (Aug. 7, 1996 Order, para. 52): " To implement the statutory requirements of Section 254(g), we will adopt our proposed rule that "a provider of interstate interexchange telecommunication services shall provide such services to its subscribers in each state at rates no higher than the rates charged to its subscribers in any other state." ...This rule will apply to all domestic interexchange telecommunications services as defined in the 1996 Act and all providers of such services."

Although ASOC has never been authorized at any time by the FCC to conduct any public interstate telecommunication services whatsoever, ASOC features itself as a provider of interexchange telecommunication services covered by the 1996 Act and the FCC implementing rules.

Next, ASOC looks at the necessity to provide services "to its subscribers in each state that it serves, at rates no higher than the rates charged to its subscribers in any other state", and discovers, *mirabile dictu*, that it serves no other "state" than American Samoa; so under this language, they are free to charge any rate they want, as long as the charges from within American Samoa are equally applied to all U.S. points without.

Therefore, in delivering interstate traffic from American Samoa just to the satellite where it is picked up by other interstate carriers, it escapes the entire force, rationale and *raison d'être* of the 1996 Telecommunications Act., because it is uniquely an interexchange carrier with no subscribers in any other state. And it escapes thereby, all competitive pressure from rates applying in other states, and it has no competitive responses to deal within the Territory, because it is a monopoly. And as ASOC indicated in its submission (page 3), that being so small and limited, no competitors are likely. So the American Samoan consumer is stuck in a 'company store'.

So, ASOC reasons that it is now lawfully empowered to charge whatever it wishes to charge, and this anomaly in the language of rate integration implementation, protects them in this freedom, and it is now their lawful right.

Certainly this was not the intention of Congress in the Telecommunications Act of 1996. in enacting Section 254 (g) to extend rate integration throughout all the communities of the United States. Congress certainly did not intend the law which was crafted to create domestic rate integration, to provide the legal basis for any community to avoid rate integration. Congress did not intend to create the very monster it was trying to destroy.

In the Joint Explanatory Statement by Congress upon the passage of the Telecommunications Act of 1996, it was stated that :

"New section 254 (g) is intended to incorporate the policies of geographic rate averaging and rate integration of interexchange services in order to ensure that subscribers in rural and high cost areas throughout the Nation *{and this includes American Samoa by definition }* are able to receive both intrastate and interstate services at rates no higher than those paid by urban subscribers. The conferees intend the Commission's rules to require geographic rate averaging and rate integration, and to

incorporate the policies contained in the Commission's proceeding entitled "Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the United States Mainland and the Offshore Points of Hawaii, Alaska and Puerto Rico/Virgin Islands (61 FCC2d 380 (1976)). " H.R. Rep. No. 458, 104th Cong. 2d Sess. 132 (1996)

The policy on rate integration for offshore points of the United States was succinctly stated in the FCC's 1976 Offshore/Mainland Rate Integration Memorandum Opinion and Order, cited above. This Order implemented the FCC's determination to have " integration of services and charges between the United States mainland and Alaska, Hawaii, and Puerto Rico/Virgin Islands into domestic patterns". (at page 5)

There is little doubt that the "sky's the limit", uncontrollable rate integration plan submitted by ASOC does not meet any standard for a "domestic pattern".

Further Congress indicated its objective with places like American Samoa Section 254 (b) (3) of its Telecommunications Act of 1996 :

'(3) ACCESS IN RURAL AND HIGH COST AREAS- Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."

The Rate integration Plan submitted by ASOC does not in any manner provide for rates 'that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas".

ASOC does even address the issues of "reasonably comparable to rates charged for similar services in urban areas". Its 60 cent rate is arbitrary. it is more than twice the rate during the day, and more than four times the rate in the evenings and weekends, than what it costs any other American Community to direct dial another community in the Nation.

As noted above, Congress has specifically included low-income consumers and those in rural, insular, and high cost areas", in its vision of who in this Nation should have access to "rates that are reasonably comparable to rates charged for similar services in urban areas". The last printed American Samoa Statistical Digest, 1995, shows the per capita income in American Samoa as \$3039 in the early 1990's.

ASOC has provide no apology for its aberration, and has not deigned to provide any justification for its rates. For it has convinced itself it can hide in an anomaly of the implementation language of rate integration, as a matter of right. It apparently believes that it has found its own black hole to be governed by its own law of physics.

We have used this analogy of a black hole for a precise and practical reason. If the FCC ever approves ASOC 's theory of its entitlement under its rate integration implementation policies, then the American consumers in American Samoa have indeed fallen into a black hole. Because there remains no theory of any possibility of these consumers escaping the grasp of ASOC's self serving, self- determined rate making. The American Samoan consumers are caught forever in ASOC's control.

Whet can be done to avoid the unacceptable consequences of ASOC's interpretation of the rate integration implementation rules, which neither Congress nor the FCC could have intended?

These matters will best be decided on the FCC's own initiative in these compelling circumstances. But we can make some observations:

1) ASOC does not have Section 214 authority to be an authorized interstate interexchange carrier. But it claims its rights to the anomaly of free wheeling rate setting under rate integration, by claiming to be an interstate interexchange carrier, without being an interstate interexchange carrier that serves any other state than its home base. We do not believe that Congress ever contemplated such an interstate interexchange carrier (IXC) in its Telecommunications Act of 1996.

2) If and when ASOC is recognized as an IXC, it will have to be designated as a dominant carrier. Its monopoly position in the Territory of American Samoa is simply a fact, an unfortunate fact, with respect to all of its LEC and IXC type operations.

3) ASOC should be deprived of its position to operate under rate integration implementation rules. Under Section 10 of the 1934 Act, the FCC has the authority to forbear from applying any provision of the Act, when "(3) forbearance from applying a regulation or provision is consistent with the public interest". Forbearing from applying rate integration rules to ASOC and avoiding the counterproductive results they are seeking, is certainly in the public interest of the American Samoan Consumer.

The FCC noted in its August 7, 1996 Memorandum and Order:

"We also will not forbear from enforcing our rate averaging policy against nondominant carriers. We note that Congress knew at the time the 1996 Act was passed that all IXCs were nondominant, and we find that Congress would not have required us to adopt rules to implement geographic rate averaging, if it had intended us to abandon this policy..." at paragraph 39.

With this line of reasoning in hand, the FCC could find that Congress did not intend the bizarre results when rate implementation policies are applied to a dominant IXC, particularly an IXC that does not operate out of its own state and only offers a connection to an independently owned and operated earth station in American Samoa not connected with ASOC.

4) The FCC could immediately declare ASOC a dominant carrier and order that ASOC comply with FCC regulations and apply forthwith for the proper authority for both its LEC and its apparent IXC operations. ASOC said they will do this in six months or so (at page 17 of ASOC submission Oct 1, 1997). No support has been offered for this delay.

Documents show that ASOC has been aware of their FCC obligations as they have been required over the past 32 years. ASOC Director, Aleki Sene wrote to the Governor of American Samoa on November 25, 1995 in an official Memorandum 28-96" admitting his failures to comply with FCC regulations and law: (Exhibit A attached)

"I knew way back in 1964 that there is no legal basis for the American Samoa Government to handle toll service.....

"... the Government of American Samoa has all four major carriers, AT&T, MCI, Sprint, and GTE Hawaii, as distant correspondents. In other words, they all operate at the other end. There is really no legal basis for this.

"I believe the FCC will ultimately exercise its lawful authority in American Samoa at some distant time in the future.."

"The revenues from toll service [\$7,500.000.] should not be allowed to slip away. "

"I believe the issue here is not how much revenues will be subject to FCC authority , but that of whether the American Samoa Government will be allowed to function as a common carrier [without being regulated by the FCC as a common carrier] after the rate integration issue is decided. I honestly think the American Samoa Government will come out the loser."

"I highly recommend we refrain from participating in the rate integration proceedings now before the FCC."

It is clear that ASOC has played 'fast and loose' with the Federal Communications Commission, consciously avoiding the obligations that it has recognized for decades. Then in the same consistent pattern, ASOC ignored the requirements of its August 7, 1996 Order for an entire year and the FCC had to write another demanding 13 page Order on July 30, 1997 to get ASOC to comply on October 1, 1997.

Given this record of no effort by ASOC to comply with FCC regulations when they acknowledge that they have been thinking about the need to comply for the last 32 years, given the fact that the American Samoan community has suffered through all these years without the benefits of FCC protection, there would seem to be no justification to allow ASOC six months to file for proper authority , when they can file for this authority in 30 days, as we think they should be required to do, and not be allowed to obtain waivers.

In fact, these considerations justify a sense of urgency in obtaining immediate ASOC compliance in obtaining the proper FCC authority, and, as swift as possible, a finding and determination by the ASOC that it is in all respects a dominant carrier.

5) If the FCC will require ASOC acting as an dominant IXC to file cost based tariffs for interstate traffic with a complete economic justification, then ASOC will undoubtedly ask for a lengthy period of time to develop its cost based tariffs in a methodology approved by the FCC. This could take many months of going back and forth.

We contend that the FCC should not wait for these cost based and fully justified tariffs to be submitted by ASOC , and wait for them to be thoroughly supported by ASOC, before it grants the relief to the American Samoan consumer which the Congress intended. If previous history means anything, ASOC will drag this process out for as long a period as it can.

We believe that the FCC should recognize the extraordinary high cost of long distance calls which the American Samoan consumers are now at this moment being compelled to endure because ASOC declined to comply with its 12 month deadline of August 1, 1997, by which deadline all of this could have been resolved, as was done by the other Territories of the United States. ASOC should not be allowed to profit from its deliberate delay.

6) During any waiting period for ASOC to proceed with its regulatory duties, we believe that the FCC can and should grant immediate and fair relief, by imposing immediate interim tariffs on ASOC as a dominant carrier for the American Samoan consumer's long distance phone calls from American Samoa to the rest of the nation.

We believe that on an interim basis, the FCC should immediately impose on ASOC tariffs from American Samoa to the rest of the Nation that are a median of the present tariffs in place from the Territory of Guam to other American communities.

Guam and Saipan are also Pacific Territories of the United States and are almost 50% further from the U.S. Mainland than American Samoa. This would be consistent with the policy of the FCC set forth in 1989, whereby American Samoan consumers can "share in the benefits of nationwide interexchange competition. If prices are falling due to competition in the corridors carrying the most traffic, prices will also fall for rural Americans."

Policy and Rules Concerning Rates for dominant Carriers, Report and Order
4 FCC Rcd 2873, 3132 (1989)

If the FCC does not take immediate remedial action, ASOC will seek delay after six month delay, to continue to harvest excess revenue; from its dominant carrier position.

ASOC has sought strung out delaying phases in its October 1, 1997 Submission, which has nothing to do with achieving compliance with rate integration. ASOC has said that they have already perfected their compliance to the letter of the law at page 6, by charging to the American Samoan consumer the same high rate to every point in the Nation.

This phased delay that ASOC wants, relates to compliance with basic FCC regulations for authority to simply operate, which should have been done, as they acknowledge, many decades ago.

ASOC wants a delay in complying with the most basic regulations because they want to prevent "financial dislocation". This should be denied not only because it is an unsupported assertion. It should be denied because ASOC gave them a year's warning that they were coming under examination.

In November, 1995, two years ago, the Director of ASOC knew that rate integration would cause a reckoning with the FCC, and yet ASOC did nothing to prepare for it, and now they want at least 6 months for compliance to avoid "financial dislocation". Recalling this 1995 memorandum by ASOC to the Governor of American Samoa, cited above:

"I believe the issue here is not how much revenues will be subject to FCC authority , but that of whether the American Samoa Government will be allowed to function as a common carrier [without being regulated by the FCC as a common carrier] after the rate integration issue is decided. I honestly think the American Samoa Government will come out the loser."

ASOC next reason for six month delay is "to be fair to ASOC's connecting carriers". This is unsupported. Nevertheless, how could ASOC finally seeking legitimacy before the FCC be unfair to its connecting carriers?

ASOC's final reason for seeking a six month delay is "to accommodate the time needed to implement the technical changes which will be needed". This is also an unsupported statement. There is nothing on its list of things to do in six months on page 17 of its submission that suggests any significant technical changes are needed. It all relates to legal filings, that can be done in 30 days by its new Washington Counsel. Indeed, ASOC has rejected all technical changes in its October 1st submission that might incur an expense in having a domestic area code. ASOC urgently rejected a domestic area code.

So there are no substantial reasons for the FCC to accommodate any of its six month delay agenda or its 18 month delay agenda, for which ASOC was obligated to comply with many decades ago. The FCC should accordingly reject these delays.

6) It is clear from a review of the FCC's 1976 Offshore/Mainland Rate Integration Memorandum Opinion and Order, cited above, that the FCC has accomplished rate integration compliance from dominant IXC carriers by simply stating, as it did in this 1976 Order, that "the major consideration in acting on [an IXC application for authority] is the integration of rates and services into domestic patterns." (at page 4). Accordingly, the FCC will have the opportunity when ASOC makes its application for Section 214 authority, to condition its grant explicitly upon ASOC complying with tariffs that satisfy the FCC's assessment of domestic pattern rates.

7) Further, we are aware that the FCC may well face a determined ASOC that will just not comply. We are aware of the authority of the FCC to directly order compliance with rates, as well as its authority to provide a substitute carrier and replace ASOC as a carrier, if ASOC is recalcitrant in providing the reasonable telecommunication services envisioned and enacted by Congress and the FCC's policies and regulations: As noted in the House Conference Report on the Telecommunications Act of 1996:

"If no common carrier will provide universal service to a community or portion of a community that requests such service, new section 214(e)(3) makes explicit the implicit authority of the Commission, with respect to interstate services, and a State, with respect to intrastate services, to order a common carrier to provide such service.

"Any carrier required to provide service under this paragraph shall be designated as an eligible telecommunications carrier under new section 214(e)(1) for the community or portion thereof such carrier is required to serve. For purposes of new section 214(e)(1), the conferees intend that the service area for a carrier designated by the Commission or a State under section 214(e)(3) shall be the community or portion thereof that requests service and for which that carrier is ordered to provide service. "

PETITIONS

There is no doubt that the local American Samoan consumer is determined to get better and more reasonable long distance telephone service than that provided by ASOC. Hundred upon hundreds of people sought copies of a petition to sign and send to the FCC, asking for a domestic area code, reasonable rates, and some supervision over their phone service that is now out of control. The Commission has these petitions in this docket, and they were sent with the hope that the FCC would take their petition seriously. This is from a community that is not given to public protests and petitions.

Nor do these petitions represent the sum of the difficulties with ASOC. Not mentioned is ASOC 's aggressive billing whereby so many people find themselves billed 80 cents for a long distance call that rang without answer and no connection made, and similar billing for a minute if the direct dialed long distance number to a U.S. point happens to be busy.

Nor has the FCC heard the complaints about ASOC's inability to handle calls to many countries in Europe.

There is no control, no local public utilities commission, no local compliance ever with our local Administrative Procedure Act requiring a hearing and findings of fairness for all fees charged by Government. No legal excuse has even been offered to the public. The local government just does not want to jeopardize its surplus cash stream from its public telephone monopoly.

TOLL FREE 800/888 NUMBERS

ASOC misleads the FCC in its statement on toll free calling:

quote: "Telephone subscribers in American Samoa can obtain access to toll free area codes (that is 800 and 888) on a toll free basis without requiring American Samoa to participate in the North American Numbering Plan (a domestic area code)".

"In fact a number of 800/888 customers including airlines, merchandisers, and government agencies, already have made arrangements with their carriers to receive 800/888 calls from American Samoa on a toll free basis" at page 11.

So the FCC is led to believe by this that there is just no problem for American Samoa customers in the matter of accessing toll free 800/888 calls.

This is not the working truth. The facts are that an article published in the local news[paper, "The Samoa News" two months ago, listed all the toll free calls available to American Samoan customers (attached here as Exhibit B). There are 34 toll free 800 numbers. A check on October 10, 1997, proved that only 19 numbers were still working, and no "merchandisers" were available.

In point of fact none of these toll free numbers are what is normally thought of as an 800 number. These are all international 800 numbers. (American Samoa is still treated as an international point, foreign to the United States.) The international 800 numbers are distinguished from domestic U.S. 800 numbers in two respects:

1) The cost of this international 800 number from American Samoa to the 800 number customer is \$2.15 per minute. The cost to an 800 number customer in the United States to other points in the United States (except American Samoa) is 12.5 cents per minute. (These are At&T quoted rates similar to other carriers.)

With this rate differential, there is no practical possibility that American Samoa customers will ever have available to them the 800 toll free world of American commerce, health aids, and public interest information.

2) All the major carriers have told us that as a practical matter, without American Samoa having a domestic area code, there is no real possibility of belonging to the U.S. domestic toll free 800/888 world. The reasons given are that domestic 800 numbers are marketed for domestic area codes, and they are set up not to recognize an international area code, and the billing system is too difficult and expensive to change to deal with a separate American Samoa international area code. All the carriers have indicated this same arena of difficulty and impracticality of giving American Samoa access to domestic 800/888 customers without American Samoa having a domestic area code.

Hence, the picture of free and easy access to U.S. toll free service as depicted by ASOC is not true, and it misleads.

ASOC'S REFUSAL TO HAVE A DOMESTIC AREA CODE

ASOC states on page 7 of its submission that it "strongly opposes" joining the North American Numbering Plan whereby it will obtain a domestic area code instead of the international area code it is determined to keep.

Here are the reasons for this position, that it wishes us to accept at face value:

1) It would be "unduly costly". To reprogram switches and other equipment would cost, ASOC says, \$3.5 million. Now this figure is not supported by any data. This figure could well be exaggerated by a desire to discourage the idea of a domestic area code. Even so, if it is technical equipment which may have to be purchased, such equipment is available from Nortel, Lucent Technology, and Stromberg Carlson on a lease purchase basis to overcome initial cash requirements. If it is skilled labor that is the problem, ASOC has a great number of highly skilled and trained technicians for which it pays less than \$5.00 per hour, making it probably the lowest cost phone equipment operator in the United States.

Assuming that the cost of \$3.5 million is supportable, ASOC complains that this "is more than one-half of ASOC's 6.6 million annual revenue from long distance service." What ASOC has failed to add is that this annual revenue is net revenue, that is, profit. Note the attached exhibit C describing a detailed report of ASOC giving 6 million in excess cash in 1996 for the Government's off budget use, and the \$12 million a recent audit showed the government has taken recently from ASOC's phone operation's surplus revenue.

So if the 3.5 million was actually needed to convert to a domestic area code, the revenue is there; the funds are readily available even from the debt of 12 million which the government acknowledges it took and owes to the phone operation.

ASOC's description that this 3.5 million would be a "cost burden to the telephone ratepayers and/or taxpayers of American Samoa" is a gratuitous statement that is controverted by its own revelation of revenue in its submission, which we have reason to believe is understated. ASOC has submitted a revenue figure to the legislature that is processing 18 million billable minutes annually, and it admits it is charging a 45 cents per minute access charge. This long distance revenue then exceeds \$8 million dollars annually.

2) Next, ASOC claims that transferring to a domestic area code would be "disruptive". When Guam and Saipan changed to a domestic area code, they kept their old code number 671 and 670, and merely changed to a domestic access protocol. The same procedure would be used for American Samoa. Guam is a much larger place than American Samoa and deals with more varied interests than American Samoa. They switched with no undue difficulties. There is no basis for conjuring up greater difficulties for American Samoa, and ASOC offers none.

3) Finally, ASOC states that it "would not serve the public interest" (page 7) to have a domestic area code. No explanation is offered by ASOC for this claim. ASOC ignores the petitions sent by the hundreds to the FCC clamoring for a domestic area code. ASOC ignores the fact that not having a domestic area code causes the American Samoan consumer to be deprived of ready access to the U.S. domestic world of toll free access. ASOC ignores the difficulties that the major carriers have consistently told they would have in serving American Samoa with domestic rate integration without a domestic area code for American Samoa.

It is just the other way around. The public interest requires a domestic area code. The FCC in its landmark 1976 Domestic Rate Integration (cited above), talked about the goal of achieving a domestic pattern of services and charges in rural and insular areas of the Nation. It is now clear that the domestic pattern actually requires a domestic area code for its achievement. We hope that the FCC will make this determination in this proceeding. The obvious public interest benefits require it, and there is no apparent reason to avoid it in this last insular case.

ASOC continues on page 9 of its Submission to argue its case against having a domestic area code, in a plethora of pointless remarks and non sequiturs:

about geographical differences with Guam;

about American Samoa being close to its neighboring island countries, as if Guam is not;

about extensive business and family contacts between American Samoa and nearby nations, as if the same is not true of Guam, only more so;

about Guam having a cable, and American Samoa does not, which by all accounts is irrelevant, and ASOC knows this because it does not elaborate;

about Guam having access to domestic satellites, and American Samoa using Intelsat satellites, a distinction that the FCC said in its August 7, 1996 Memorandum was irrelevant;

about American Samoa not having a point of presence of another carrier like Guam, which relevancy to a domestic area code has yet to be discovered;

and, finally, ASOC notes that Guam and Saipan have long been interested in having a domestic area code for their people, while ASOC has shown no interest, as if ASOC's lack of interest was the only compelling criteria.

What is missing here is an explanation of ASOC's real motive for its overreaching resistance to a domestic area code for American Samoa. It is our understanding that this simply comes down to more money for ASOC.

If ASOC avoids a domestic area code, then they can remain an "international" point for accounting settlement purposes with connecting carriers. This, we are told, allows them to maintain a system of higher rates and greater settlement profit from connecting carriers, particularly on outbound calls which is the heavy end.

So ASOC is determined to continue the fiction that they are not part of the domestic United States for their purposes, even though Congress in its 1996 Telecommunications Act, and the FCC in its Memorandum and Orders, have spoken as clearly as it can be articulated, that these aberrations have to stop.

A LOCAL EXPLANATION

Finally one more item is missing from ASOC 's October 1, 1997 submission to the FCC. What ASOC has said in its submission to the FCC as justification for refusing to have a domestic area code is one story; but it is saying something else back in the islands for public consumption, and it is another story.

ASOC is advising and declaring to the Governor and the public that American Samoa must provide a fiber optic cable between American Samoa and the nearest point of U.S. land (Hawaii) in order to have a domestic area code

Details are offered by the Director of ASOC, published in the local newspaper, that "Depending on the design capacity, this cable extension could cost up to \$100 million."

Upon the apparent advice of ASOC , on September 24, 1997, the Governor of American Samoa in his first public announcement on American Samoa's submission of a rate integration plan, made the following statement to the press: "We cannot adopt the NANP without a fiber optic cable link to the rest of the world, and we don't have such an expensive thing."

Then the Director of ASOC said in an article published in the Samoa News (newspaper) on October 6, 1997, regarding the high cost of installing a domestic area code for American Samoa, stating (quote):

"Governor Tauese's reference to the huge cost (millions or billions) was related to the cost of extending a fiber optic cable to the nearest U.S. soil (Hawaii) to American Samoa. Depending on the design capacity, this cable extension could cost up to \$100 million." (unquote)

This explanation is certainly a resounding reason for not having a domestic area code for American Samoa. But it was never offered to the FCC in its October 1, 1997 submission. And there is probably a good reason why it was not.

We brought this remarkable justification to every carrier serving American Samoa. We could find no support for it. Instead we heard more than one incredulous exclamation of "nonsense". In two statements to the Samoa newspapers on October 9, 1997 and October 13, 1997, countering views were published. A copy of these two published statements are submitted here as Exhibits D and E.

When extreme measures of this kind are taken to unfairly dissuade the public whose views are solicited in Commission proceeding, it seems appropriate at least to advise the Commission that these events are taking place.

An original and five copies of this Comment are herewith submitted

Respectfully submitted,

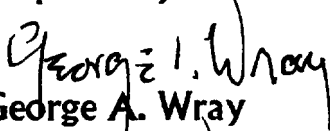
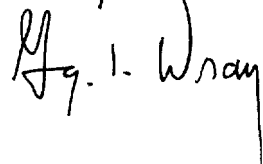

George A. Wray


Exhibit A
page 1 of 4

AMERICAN SAMOA GOVERNMENT

PAGO PAGO AMERICAN SAMOA 96799

OFFICE OF COMMUNICATIONS

In reply refer to:

Serial: 28-96

COM: 11

November 29, 1995

To: Governor Lutali
From: Director of Communications
Subject: Rate Integration
Reference: My Memo of November 15, 1995, Serial: 21-96 and
Your Memo of November 20, 1995, Serial: 1308

Thank you for your letter of November 20, 1995 on the subject issue. As requested, I am attaching for your review some of the most pertinent documents which I believed are relevant to the subject matter. Please refer to your letter of November 20, 1995 for reference.

Long Distance RatesCost Comparison

<u>American Samoa</u>			<u>Guam</u>	<u>Saipan</u>
	<u>Current</u>	<u>Proposed</u>	<u>Current</u>	<u>Current</u>
Highest Per Minute Rate	\$0.90	\$0.80	\$1.70	\$1.85
Lowest Per Minute Rate	\$0.70	\$0.60	\$0.74	\$1.25

The huge disparity between our rates and those of Guam and Saipan prompted both island governors to file for relief through rate integration. We propose to reduce our rates further effective January 1, 1996. The reduction is justified through an expected drop of the space segment penalty that we have been paid since 1979. The savings will be in the order of \$250,000.00 per year.

Regulations of the Office of Communications

The Communications Act of 1934 clearly states the authority of the FCC on American Samoa over all inter-state and foreign commerce by wire or radio. However, this authority has never been enforced on the Office of Communications of the American Samoa Government. Guam Telephone Authority (GTA) was recently forced by the FCC to file tariff. See item on FCC Report, June 3, 1992 edition. Also see item on Pacific Magazine, September/October 1992 edition.

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The applicability of U.S. Statutory Law and Federal Communications Commission Regulations was reaffirmed by Legal Opinion No. 04-87, June 3, 1987 by former Attorney General Afoa Moega Lutu. Further research on FCC authority over American Samoa was conducted by former Assistant Attorney General Richard D. Lerner in his memo to former Attorney General Tautai A.F. Fa'alevao on March 26, 1992, Serial ID#: 044-92.

The research by former Assistant Attorney General Lerner answers some of the questions raised in your letter. It also discusses some potential problems, some of them insurmountable, if any issue of authority is raised with the FCC. I have always advocated the philosophy of not raising any issue with the FCC unless we are prepared to cope with the consequences. I knew way back in 1964 that there is no legal basis for ASG to handle toll service, but in the absence of a bona-fide common carrier, the Government of American Samoa was forced to perform this function for the convenience of the public.

Throughout the years since ASG assumes the role of a common carrier for American Samoa, the FCC has co-operated well with the Interior Department in giving ASG the required radio frequency assignments through IRAC for the operation of our telecommunications system. At no time, the FCC threatened to stop us from doing what a common carrier would normally do. This harmonious relationship between the FCC, Interior and the American Samoa Government has allowed the Office of Communications to grow and prosper as a self-designated common carrier.

Over the objection of the IG, the Office of Communications in 1986 requested and received help from the Interior and the FCC to operate a cellular telephone system in American Samoa, which is now becoming an integral part of the American Samoa Telecommunications network. To protect the FCC, a condition was included in our frequency assignments that renewal was contingent upon the availability of commercial enterprise competent to provide commercial service. Needless to say that no commercial license holder has yet to provide service in American Samoa and at the ten cents rate we are charging per minute.

Revenues of the Office of Communications

The Office of Communications takes in \$10,000,000.00 annually. Approximately 75% of this amount is from long distance telephone service. This is the portion that the FCC would regulate under the 1934 Communications Act. The remaining 25% or \$2.5 million dollars is from local telephone service and is totally controlled by ASG. If the \$2.1 million dollars of statutory obligations would have to be paid out of the local service revenues, a severe deficit condition would result thus precluding us to cover our legal debts.

Not obligation
directive towards
Available Net REVENUES

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Thus revenues from toll service should not be allowed to slip away. I believe the issue here is not how much revenues will be subject to FCC authority but that of whether ASG will be allowed to function as a common carrier after the rate integration issue is decided. I honestly feel ASG will come out the loser by our own doing.

Other U.S. Carriers

I do not believe the FCC would allow the U.S. Carriers to compete with the Office of Communications, a non-carrier. The reason behind this conclusion is based on my experience with past and present U.S. Telecommunications policies and my working relationship with some staff members at the FCC. This conclusion is also reached by the former Assistant Attorney General Lerner on page 2, paragraph 3 of his research. In my message to Congressman Faleomavaega on October 23, 1995, I stated that unlike Guam and Saipan that do have U.S. carriers presence in their territory, the Government of American Samoa has all the four (4) major carriers, AT&T, MCI, SPRINT and GTE Hawaii as distant correspondents. In other words, they all operate at the other end. There is really no legal basis for this. Instead, through tactful negotiations, they agreed not to set up shops in American Samoa. Rate integration could change this if the FCC orders these carriers to implement the rate integration decree. Thus the obvious loser will be ASG.

With all documentations we have on the rate integration issue, I can only see it as being beneficial to a small group of individuals who are pushing it for immediate benefits while ignoring the long-term implication on ASG. Given time and the opportunity for the Office of Communications to implement its long-range service improvements and equipment modernization projects, the people of American Samoa would stand to enjoy these service improvements at the lowest and most affordable cost possible.

I believe the FCC will ultimately exercise its lawful authority in American Samoa at some distant point in the future, but until that time comes, let us pay our EOB Bond, Retirement Loan and ASG subsidy and take advantage of this very unique opportunity we have.

I highly recommend we refrain from participating in the rate integration proceedings now before the FCC.

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Please call if you should need any further clarification on points raised herein.



ALEKI SENE

Attachments:

- (1) FCC Report - June 3, 1992
- (2) Pacific Magazine - September/October 1992
- (3) Legal Opinion No. 04-87 - June 3, 1987
- (4) Research by Ass't Attorney General Richard D. Lerner
March 26, 1992, Serial ID: 044-92
- (5) Sample Cellular Assignment - Interior Aug. 4, 1988
- (6) Communications FY 1996 Budget Summary

Several toll-free numbers can be locally accessed

Exhibit 1

by Linda Freeman

Most everyone on the island knows what an "800" number is. It is a long distance number that can be dialed for free. That is, if you are in the United States.

Some people are aware that there are a few "800" numbers that you can dial in American Samoa and get that benefit. (Ignore page 9 of the 1995-96 phone book, and use the list on page 57 as your starting point).

Few people are aware of the complete list of "800" numbers that are available to local residents. The Office of Communications offers the following up-to-date list, and suggests that residents who want more 800 numbers to communicate your district directly to the companies and organizations who you want to call.

As Director of Communications Akeli Sene explained, "they are paying the bill at that end. If they decide to authorize calls from American Samoa on their 800 numbers, that is a decision that is their's to make."

In the meantime, happy dialing! (NOTE: to dial an "800" number, do NOT use any prefix. Just dial the "800" and the phone number).

Department of Veteran Affairs	800-844-7928
American Express Redund	800-221-7282
Deluxe Check	800-291-0519
Info Access	800-544-5141
MCSENTERLE RBC	800-551-1912
Educational Testing RVN	800-245-5255
ATT CCS WorldPay	800-643-6996
ATT CCS WorldPay	800-647-6996
ATT World Traveler	800-337-8619
Master Card International	800-307-7308
United Airlines	800-538-2975
Latin American Enterprise	800-635-3101
Bank of Hawaii	800-835-3824
ATT World Traveler	800-337-8630
American Express	800-528-2121
Allied Signal	800-671-6184
Allied Signal UOP	800-267-9028
Auto Europe	800-992-5569
Amerizel	800-554-3387
American National Ins.	800-880-6172
Freight Runn Fire Supply	800-375-4431
World Long Distance Inc.	800-865-4140
UTS115 Telecom Corp	800-204-4822
Emplant Talk	800-353-7135
BellSouth Business System	800-431-1996
MasterCard International	800-247-7736
Independent Telephone Sys	800-249-6769
Regd Motor	800-285-4545
American Family Life Ins	800-462-3522
Secur Card	800-648-8534
Travel Information Center	800-858-6558
AT&T Bell Labs	800-647-6895
DTCC-PAC	800-633-8100
DTCC-PAC Customer	800-630-8101

Exhibit C
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* Government deficit...

Exhibit C

from page 1

The Treasury overspent its budget by \$280,000, followed by the Fono (\$222,000), the Governor's Office (\$112,000), Samoan Affairs (\$100,000) and others.

Some agencies came out ahead: Public Works, for example, spent only \$3.7 million even though it had an approved budget of \$4.8 million. The Department of Agriculture spent \$132,000 less than it had been budgeted.

Federal grants, which totalled \$43 million, were spent dollar for dollar for the most part. The cost overruns mentioned above came from local funds.

ENTERPRISE FUNDS

The CAFR does not list ASPA, so we cannot report on that agency.

But there was one big loser and one big winner amongst the Enterprise Funds. The trick is to decide which one is which.

Is the Office of Communications a winner for bringing in \$5.2 million more than it needed to operate the local phone system, or does that make it a loser, because virtually all of that money was swallowed up by the General Fund to cover the overspending by other agencies (what wasn't swallowed up for that purpose was used to pay the Executive Office Building and Retirement fund loans)?

Is the Airport a loser for having spent \$1.1 million more to operate the airport than the revenues it derived, or does that make it a winner, since other funding sources stepped up to cover its loss?

Is the Office of Communications a winner, or a sucker, for having amassed a \$12 million "credit" at the Department of Treasury? Twelve million dollars represents the accumulated total of Communication revenues deposited to the General Fund in excess of Communication expenditures paid out of the General Fund.

If Communications did not spend \$1.5 million a year for the EOB and Retirement Fund loans, its "credit" would be several million dollars a year higher.

LONG-TERM DEBT

The \$34 million in "long-term debt" referred to above, at the start of this article, is broken down as follows:

➤ \$9 million to finish repaying the EOB bond (loan) over the

Present
2.4 years

The figures above do not take interest into account; in other words, they represent the principal balance due today. If the long-term debts are paid according to established schedules, interest in excess of \$10 million will also be due.

It must also be noted that ASG is hopeful that FEMA will completely forgive the \$10.2 million special loan referred to above.

INSURANCE CASE

A federal court in California has awarded ASG \$86.7 million following a lawsuit filed by ASG against its insurer after Hurricane Val. The insurance company, Affiliated FM, has appealed the decision and no payment has been made. A final decision is likely to be reached this year or next.

If this award were to be affirmed, a great deal of money would be kept by ASG's private legal counsel and another large sum would go to FEMA for advances not noted above.

Even after those two amounts are deducted from \$86.7 million, many tens of millions would be available to help ASG pay off its accumulated deficit and long-term debt.

HOW DOES ASG DO IT?

If, as this story suggests, ASG falls further behind every year, how do we manage to keep going? Is the ASG Print Shop printing money? Based on interviews with Treasury officials, it appears that the burden of ASG's ballooning deficit is primarily borne by vendors, phone users, and ASPA.

Vendors: At present, ASG owes vendors about \$12.1 million, representing about a year's worth of unpaid invoices (ideally, ASG should owe one or two months worth of invoices at any given time). Each month, the amount owed to vendors goes up by about \$1 million as new invoices come in, and it goes down by a smaller amount as old invoices get paid. Treasury officials say that Accounts Payable (money owed to vendors) has been creeping ever upward for the past several years because new bills accumulate faster than old ones are paid off.

In other words, a significant part of the deficit is being financed by companies who provide goods and services to ASG without receiving payment. Of the \$12.1 million owed to vendors, Treasury officials believe that medical invoices—for either supplies or off-island medical services—account for \$7 to \$8 million. Some of the invoices are very old, and almost all of them are from off-island.

Phone Users: Almost half of all phone revenues (or about \$5 million a year) ends up going to the General Fund to cover over-spending by other parts of the government, or to the loan repayments for the EOB bond and the Retirement Fund loan (which was itself taken out to forestall the day of financial reckoning at a time when ASG had run out of cash).

Exhibit C

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